

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

V.

MARCELLO CAPONE

Defendant.

Criminal No. 11-CR-456 ENV

**DEFENDANT MARCELLO CAPONE'S POSITION WITH REGARD TO THE
GOVERNMENT'S MOTION IN LIMINE**

COME NOW, The Defendant Marcello Capone, by and through his attorney, John T. Riely and states his position with regard to the government's motion in limine ¹ and states as follows:

1. The government, in its motion in limine, seeks to limit the defense from introducing evidence or advancing argument that Mr. Capone lacked the specific intent to violate 8 USC 1326(a) when he presented himself to the immigration officials at Kennedy Airport in New York City on or about 24 May 2011.
2. On this narrow issue, the use of the lack of specific intent as a defense to the charge set forth in the single count of the indictment, the defense posits that it does not intend to so rely upon such evidence nor does he intend to advance such an argument in closing and therefore does not oppose the motion in limine set forth by the government as narrowly drafted.

¹ Docket Entry #17

Respectfully submitted:

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CERTIFICATE OF SERVICE

On September 20, 2011, **I**, John T. Riely, Esq., Attorney, served a copy of Defendant Position with Regard to the Government's Motion in Lime to Tiana A Demas, Assistant U.S. Attorney via the ECF filing system.

John T. Riely